



12-04-07
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

**BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of:

Order Instituting Informational Proceeding on a Greenhouse Gas Emissions Cap

Docket 07-OIIP-01

**COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY
ON THE NOVEMBER 9, 2007 RULING REGARDING TYPE AND
POINT OF REGULATION ISSUES**

C. Susie Berlin
McCarthy & Berlin, LLP
100 Park Center Plaza, Suite 501
San Jose, CA 95113
Phone: 408-288-2080
Fax: 408-288-2085
Email: sberlin@mccarthylaw.com
Attorneys for the:
Northern California Power Agency

December 3, 2007

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

In the Matter of:

Order Instituting Informational Proceeding on a Greenhouse Gas Emissions Cap

in Rulemaking 06-04-009 and with the California Energy Commission (CEC) in Docket 07-OIIP-01.

I. INTRODUCTION

The November 9 Ruling seeks comments on a myriad of issues regarding the type and point of regulation for the electricity sector. NCPA does not address all of the questions set forth in the ruling, but submits these comments in the interest of helping the CPUC and CEC formulate a recommendation to the California Air Resources Board (CARB) on the appropriate point of regulation for the electricity sector. NCPA notes this is but one component in a multi-faceted process that will be employed in order to fully implement Assembly Bill 32 (AB32) and utilized to achieve real emissions reductions in California, and which will be addressed in CARB's final Scoping Plan.

II. RESPONSES TO QUESTIONS

3.2. Principles or Objectives to be Considered in Evaluating Design Options

Q3. *Do you agree with this set of objectives [Goal attainment, Cost minimization, Compatibility with wholesale markets and the Market Redesign and Technology Upgrade, Legal risk, Environmental Integrity, Expandability, Accuracy, Administrative Simplicity]? Are there other objectives or principles that you wish to see included? If so, please include your recommendations and reasoning. Finally, please rank the objectives above, and any additional factors you propose, in order of importance.*

NCPA Response to Q3: NCPA concurs that each of these objectives should be considered when developing a recommendation for a point of regulation. However, one very important factor is not included in this list, and that is grid reliability. The objective of greenhouse gas (GHG) reductions must be achieved in the context of providing safe and reliable electric service to California's consumers; this cannot be done if the state moves forward with implementation of AB32 without consideration of how such implementation will impact the reliability of electricity service. Indeed, AB32 mandates that the provision of reliable and affordable electric service be considered in the context of the state's Scoping Plan. (Health and Safety Code § 38561(a))

3.3. Load-Based Cap-and-Trade System Design

Under a load-based approach, the regulated entities would be the retail providers of electricity to California consumers. Retail providers would be required to surrender allowances for the GHG emissions associated with all power sold to end users in California. Generators would not have a compliance obligation under this system, except possibly for exported power, as discussed in more detail below.

NCPA Response to Q3.3: NCPA generally favors a point of regulation that provides the greatest amount of flexibility for the entity with the reduction obligation to effect the necessary reductions. Since most POUs are vertically integrated – providing retail service with mostly owned-generation – whether or not the point of regulation is the “load” or the “source” is not as crucial. Rather, what is more important is that any system adopted in California allow for a transition to a regional or federal program that does not adversely impact the investments that California entities make in implementing a California program.

***Q4.** With a load-based cap-and-trade system, should exports from in-state generation sources be included and accounted for under the cap? Why or why not? If so, how? For example, exports could be captured in a cap-and-trade system by regulating in-state sources that export, or by counting the emissions associated with exported power, without any compliance obligation on the exporter. There may be other options as well.*

NCPA Response to Q4: Generally speaking, AB32 mandates a reduction in emissions from electricity used to serve customers in California. Power exports from California entities would not properly be included under a cap-and-trade program. Further, it is likely, especially as the actual implementation date of AB32 policies draws nearer, that the generation resources located in California will emit fewer emissions as entities strive to comply with the regulations adopted by both the CPUC and CEC pursuant to Senate Bill 1368.

***Q11.** If emissions associated with imported power are excluded from a cap-and-trade program, what policies beyond the existing suite of program including energy efficiency, California Solar Initiative, RPS, and Emission Performance Standard (EPS) do you recommend that California employ to achieve the necessary reductions from the electricity sector?*

NCPA Response to Q11: California already has an extensive suite of programs aimed at reducing GHG emissions. While it is always beneficial to look for

alternative ways to achieve the AB32 mandates, the entities should be given considerable leeway to utilize the existing suite of tools to effect emissions reductions. Further, as Kevin Kennedy of CARB recently noted, there are several “tools” that will be evaluated for AB32 implementation, and several different approaches will be considered by that Agency in both developing their Scoping Plan and in implementing AB32, including direct regulations; alternative compliance mechanisms; market-based mechanisms that includes cap-and-trade programs, as well as offsets; as well as incentives, “fee-bates”, voluntary actions and a carbon tax or fee.²

Q12. As the Public Utilities Commission does not currently have authority to oversee all energy efficiency and renewable procurement programs for all kinds of retail providers (investor owned utilities (IOUs), community choice aggregators (CCAs), electric service providers (ESPs), and publicly owned utilities (POUs)), which agency(ies) should fill in any gaps? Which agency should be responsible for overseeing energy efficiency and renewable procurement for POUs? Would the California Air Resources Board (ARB) have the authority to require certain energy efficiency and renewable targets be met by POUs?

NCPA Response to Q12: There are currently no “gaps” to be filled with regard to oversight of POU energy efficiency and renewable procurement programs. While the IOUs are lawfully regulated by the CPUC, the POUs are likewise regulated by their local governing bodies; elected officials that are responsible for promulgating and implementing rules and regulations for the lawful operation of the publicly owned utilities. POUs are already subject to extensive and comprehensive oversight, and their constitutionally authorized local governing bodies should continue to be responsible for overseeing energy efficiency and renewable procurement, as they are all other aspects of utility operations. There is no evidence that this oversight is anything less than sufficient to meet the goals of the legislature, and in fact the chair of the Assembly Utilities and Commerce Committee Lloyd Levine has even recognized NCPA’s efforts in helping to implement AB2021 programs in a letter to NCPA General Manager Jim Pope on October 10, 2007. As more fully set forth in the Opening Comments of the California Municipal Utilities Association, the POUs have existing regulatory authority to continue to oversee the legislative mandates, and an

² California Air Resources Board Presentation; AB 32: The California Global Warming Solutions Act of 2006; Scoping Plan Kick-Off Workshop, November 30, 2007, Staff Presentation, slide 28.

additional level of regulation in this regard is simply unnecessary.

Q13. What sources would a source-based system cover? Could it cover California utility-owned facilities located outside of California?

NCPA Response to Q13: A source-based system should cover resources located outside of California that are owned by California entities only to the extent that the electricity from those resources is imported into the state and consumed in California, consistent with the definition of statewide greenhouse gases set forth in Health and Safety § 38505(i).

Q14. Would a strengthened EPS assist in reducing emissions due to California imports? What recommended changes would you make to the EPS?

NCPA Response to Q14: The EPS and the regulations implementing the standard are not even a year old. There should be no changes to the program until there is sufficient data to evaluate whether or not the EPS has been a success. Again, while the state should remain forward thinking and attempt to implement practical and necessary measures that will facilitate achieving the AB32 reductions, this should be done in the context of existing programs and with the recognition that existing programs must be given the opportunity to work.***3.5. Deferral of a Market-based Cap-and-Trade System***

Q21. How important is it that a cap-and-trade system be included in the near-term as part of the electricity sector's AB 32 compliance strategy?

NCPA Response to Q21: It is not important that a cap-and-trade program be adopted in the “near term.” Rather, it is more important that the state view all of the options available and move forward with the most technologically feasible and cost-effective measures first.

Q22. Would your answer to Q12 be different if there is no market-based cap-and-trade system? If so, please explain.

NCPA Response to Q22: Q12 asks what mechanisms need to be put into place to address the fact that the CPUC does not have regulatory oversight over the POUs. As noted in response to Q12, there is no need to add an additional layer of oversight with regard to POU energy efficiency and renewable procurement programs because those programs are already being overseen by elected officials that are the local governing bodies of the POUs. This does not change regardless of whether there is a

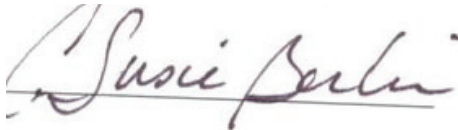
market-based cap-and-trade system.

III. CONCLUSION

NCPA appreciates the opportunity to submit these comments and looks forward to continuing to work with the CPUC and CEC in this process.

December 3, 2007

Respectfully submitted,

A handwritten signature in dark ink, reading "Susie Berlin", written over a horizontal line.

C. Susie Berlin
McCarthy & Berlin, LLP
100 Park Center Plaza, Suite 501
San Jose, CA 95113
Phone: 408-288-2080
Fax: 408-288-2085
Email: sberlin@mccarthylaw.com
Attorneys for the:
NORTHERN CALIFORNIA POWER AGENCY

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rule of Practice and Procedure,

I have this day served a true copy of the **COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY ON THE NOVEMBER 9, 2007 RULING REGARDING TYPE AND POINT OF REGULATION ISSUES** on all parties on the Service Lists for R.06-04-009, as listed on the Commission's website on November 13, 2007, by electronic mail, and by U.S. mail with first class postage prepaid on those Appearances that did not provide an electronic mail address.

Executed at San Jose, California this 3rd day of December, 2007.

A handwritten signature in blue ink, appearing to read 'Katie McCarthy', is written over a horizontal line.

Katie McCarthy